

*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

1869  
Jan'y. 29.

SHAMI MOHAMMED (JUDGMENT-DEBTOR) *v.* MUNSHI MOHAMMED ALI  
KHAN (GOVERNMENT PLEADER)\*

*Limitation—Act XIV. of 1859, ss. 20 & 17—Stamp Fees—Pauper Suits.*

A decree had been obtained by a party suing *in forma pauperis* against Shami Mohammed (appellant). The Government (represented by Munshi Mohammed Ali Khan) now sought to recover against Shami Mohammed the amount of stamps which would have been paid by the plaintiff, if he had not been permitted to sue as a pauper. *Held*, that the right of Government to recover the Stamp Fees in question under section 309 of Act VIII. of 1859, is not affected by the law of limitation laid down in section 20, of Act XIV. of 1859.

Baboo *Kali Krishna Sen* for appellant.

Baboo *Jagadanand Mookerjee* and *Anukul Chandra Mookerjee* for respondent.

The judgment of the Court was delivered by—

NORMAN, J.—This is an appeal from the decision of the Principal Sudder Ameen of Dinagepore, on an application by the Government for execution in respect of a sum of Rupees 156 on account of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, recoverable by the Government under section 309 of Act VIII. of 1859.

The original decree in favor of the pauper plaintiff was passed on the 31st of March 1864; that decree was affirmed by the Judge in appeal on the 26th of April 1865, and the Judge's decision was confirmed by this Court, in special appeal, on the 4th of May 1866. The Government applied for execution on the 21st April 1868, and the question which has been argued before us is whether or not the Government is barred by limitation in respect of the amount of stamp duties recoverable under the decree of first Court in 1864, as being more than 3 years before the application for execution. The 309th section of Act VIII. of 1859 provides, that "on the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff, if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable." Now it is, no doubt, clear that upon that decree of the first Court, the Government might have proceeded at once to realize the amount of stamp under the order of the Court, according to the calculation of the Court under that decree. The 360th section of Act VIII. of 1859 enacts, that "a decree is to state the

\* Miscellaneous Special Appeal, No. 443 of 1868, from an order of the Officiating Judge of Dinagepore, dated the 14th August 1868, affirming an order of the Subordinate Judge of that district, dated the 11th May 1868.

costs incurred in the appeal, and by what parties, and in what proportions, such costs, and the costs in the original suit, are to be paid." The decree of the Appellate Court is, therefore, to be an original decree in respect of all the costs, both of the appellate and of the first Court; and upon that ground it appears to us that in any case a party would be entitled to a period of 3 years from the date of such decree to execute that decree in respect of costs of the lower Court, as well as the costs of the Appellate Court. In considering the right of the decree-holder, it appears to us to make no difference whether the decree expressly provides for, or in detail refers to, the costs in the lower Court, or merely incorporates the order of the lower Court as to the costs by affirming the decree. In either case the decree of the Appellate Court is "a judgment decree or order" as to such costs, within the meaning of section 20 of Act XIV. of 1859, from which a new period of limitation can be computed.

In the case immediately before us no difficulty which might exist in ordinary cases stands in the way of the Crown. The Crown is not named in the 20th section of Act XIV. of 1859, and the 17th section of that Act expressly provides that "this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claims whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force." The right of the Government to the stamp fees in question is a public right. It is, therefore, clear that section 20 of Act XIV of 1859 has no application to this case. The appeal is dismissed with costs.

1869

SHAMI  
MOHAMMEDI  
v.  
MUNSKI MO  
HAMMED AL  
KHAN.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

KAPALI BEWA (PLAINTIFF) v. KESHARAM KUCH (DEFENDANT.)\*

Special Appeal—Suit by Heir—Small Cause Court—Act XI. of 1865, s. 6.

1869  
Feb'y. 4.

The widow and heiress of a deceased person, sued the defendants to recover personal property, valued at Rs. 200, said to have been taken by them from deceased in his life time.

Held, that a special appeal was barred by section 27 of Act XXIII. of 1861.

Baboo Ja dwath Seal for appellant.

Baboo Abhay Choram Bose for respondent.

The judgment of the Court was delivered by—

NORMAN, J.—We have been prevented from going into the merits of this case by a preliminary objection taken by the respondent's vakeel, that, under section 27 of Act XXIII. of 1861, no appeal lies, upon the ground that the suit is one cognizable by the Small Cause Court. We think that that objection is

\* Special Appeal, No. 2054 of 1868, from a decree passed by the Deputy Commissioner of Sibsagar, dated the 30th March 1863, reversing a decree of the Sudder Ameen of that district, dated the 7th August 1867.